

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 460 of 2005**

1. Purushottam Lal Sharma Husband S/o Late Shri O. L. Sharma, Aged About 81 Years R/o Prem Jyoti, Near Mahila Police Thana, Byron Bazar, Raipur Chhattisgarh, Chhattisgarh
2. Maneesh Sharma S/o. Shri Purushottam Lal Sharma, Aged About 50 Years Permanent R/o. Prem Jyoti, Near Mahila Police Thana, Byron Bazar, Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- **Petitioners****Versus**

1. The State Of Madhya Pradesh And Others Through Chief Secretary, Vallabh Bhavan, Bhopal Madhya Pradesh, Madhya Pradesh
2. Director Of Medical Education, Govt. Of M.P. Satpura- Bhawan Bhopal Madhya Pradesh, District : Bhopal, Madhya Pradesh
3. Dr. (Smt.) S. Sapre Reader/ Professor (Obst. And Gynac) Medical College, Gwalior Madhya Pradesh, District : Gwalior, Madhya Pradesh

--Respondents

For Petitioners	:	Ms. Naushina Ali, Advocate
For State	:	Mr. Majid Ali, Dy. G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****02.04.2018**

Heard.

1. At the outset, it has to be mentioned that though the original petitioner Dr. (Smt.) Shobha Sharma could not get decision of her case during her lifetime, the legal representatives of the petitioner were allowed to prosecute and therefore, the occasion for the Court to decide the issue arising for consideration on merits.
2. The Original Petitioner Dr. (Smt.) Shobha Sharma (since dead) was initially appointed as Lecturer on 23.06.1970 in the Department of Obstetrics and Gynecology in Pt. J.N.M. Medical College, Raipur. After 15 years of service, the Original petitioner was promoted as Reader on 09.07.1985 in the same department. Along with the covering memo dated 05.09.1991, the final gradation list showing seniority position as on 31.09.1991, was issued which reflected

petitioner's position at serial No.3 and that of respondent No.3 at serial No.5.

3. The petitioner was, however, shocked to learn that even before finalization of the gradation list, which was to happen 30 days after publication of the final gradation list, an order of promotion was issued on 04.09.1991 by which promotions were made to the post of professor in the college of the petitioner as well as in other medical colleges, in the then existing State of Madhya Pradesh. Respondent No.3, a junior to the petitioner was promoted as a professor resulting in petitioner supersession in the matter of promotion to the post of professor. Aggrieved by the same, the petitioner filed an Original Application before the Madhya Pradesh State Administrative Tribunal at Jabalpur, registered as Original Application No.2316 of 1991. The case was eventually transferred to the Bench at Tribunal Raipur and finally when the Tribunal was abolished, it was transferred to this Court and then registered as a writ petition.

4. Learned counsel for the petitioner would submit that even though the criteria for promotion is merit-cum-seniority, the petitioner is entitled to be promoted over and above a junior as according to rule, promotions have to be made with due regard of seniority and unless a junior is more meritorious, even by application of criteria for merit-cum-seniority, junior will not get precedence, according to learned counsel for the petitioner, respondents have failed to discharge this burden of proving before this Court either through their pleadings or by producing any records that respondent No.3 was assessed to be more meritorious as compared to the petitioner, resulting in petitioner's supersession. Therefore, an inference may be drawn in favour of the petitioner and against official respondents that the petitioner was illegally superseded.

5. Per contra, learned counsel for the State would submit that the criteria for promotion as provided under the Rules is merit-cum-seniority, therefore, only by virtue of seniority, a senior is not entitled to promotion. He would submit that in the return, an emphatic statement has been made that the petitioner was not found fit and the criteria being seniority-cum-merit, the petitioner was rightly not promoted though considered for promotion. He would further submit that minutes of DPC were actually produced before the Tribunal on 18.03.1993 and later on, when enquiry was made, the records were not found available. He would further submit that the minutes of meeting were already submitted therefore answering respondents cannot be held responsible for loss of relevant records and no adverse inference may be drawn against them on account of non-production of relevant records of DPC.

6. After going through the various order-sheets of the present case, it is found that the Tribunal had issued direction for production of original DPC record. Order dated 18.03.1993 recorded by the Tribunal shows that the minutes of DPC were received in a sealed cover but the Court found that the basic document i.e. annual confidential report of the persons whose cases were considered by the DPC were not made available and the Tribunal considered it was necessary to go through those records. The case was directed to be relisted and minutes of DPC were directed to be kept in a sealed cover with the Registrar of the Tribunal. Again on 19.07.1993, the Government was directed to file the record of ACR and copies of DPC proceeding. This Court taking note of this background directed enquiry to be made and it was noted an order dated 01.03.2016 that though the minutes of DPC were submitted before the Tribunal in a sealed envelope on 18.03.1993, the same was not found available and Additional Registrar (Judicial) submitted report that no such record/envelop was received along with the records of the case. Thereafter the State counsel was granted time to ascertain as to whether copy of the minutes of the DPC is available in the concerned department.

7. Learned State counsel, however, expressed inability by submitting that they do not have the minutes of DPC with them. He would further submit that later on, the State submitted some documents along with an application for taking document on records to demonstrate that all efforts were made to make available the relevant records.

8. The position, as stand today, is that neither the minutes of DPC are available before the Court nor the annual confidential report of the petitioner, respondent No.3 and other officers who were considered for promotion in the DPC which was convened on 26.12.1990 for promotion to the post of professor in the department of Obstetrics & Gynecology, Pt. J.N.M. Medical College at Raipur. The criteria for promotion from the post of Reader to the post of professor is governed by statutory prescription contained in Madhya Pradesh Medical Education (Gazetted) Service Recruitment Rules, 1987. Rule 15(2) thereof provides thus :

“R.15(2). The Selection for inclusion in such list shall be based on merit and suitability in all respect, with due regard to seniority.”

It is therefore, apparent that the criteria for promotion would be merit-cum-seniority meaning thereby that where merits are equal, senior will get precedence. However, as is well settled legal position, where junior is more meritorious, he will take precedence over the senior on the basis of merit and seniority will have to

yield to merit.

9. The petitioner being senior to respondent No.3 does not appear to be in dispute in view of the seniority position obtaining as on 03.09.91 and as reflected from the final gradation list were issued along with memo dated 05.09.91 (Annexure A/4).

10. Vide the memo dated 05.09.91 issued along with final gradation list of Professor, Readers, Lecturers, objections were invited till 31st of September, 1991. It also shows that the seniority list was prepared as on 01.07.91. This document would show that the list was not final and objections were invited, 31/09/91 was the last date for submission of objection but then, as disclosed by respondents themselves, a DPC was already convened on 26.12.1990 for considering eligible Readers for promotion to the post of professor in the department of Obstetrics and Gynecology in the medical college. Followed by impugned promotion order dated 04.09.1991. It would thus become apparently clear that even before memo dated 5.09.1991 could be issued, not only DPC was held but promotion order were also issued on 04.09.991 itself.

11. True, it is that the seniority is not the only criteria for promotion in the matter of promotion to the post of professor, when supersession is called in question, the State is under an obligation to discharge his burden by proving that such supersession was justified in terms of the rules i.e. the junior officer who was promoted had better or more meritorious records of service. However, in this regard, there is absolutely no pleadings in the return of the respondents. The respondents have not disclosed as to what were ACR of the petitioner and that of respondent No.3 to demonstrate that respondent No.3 was more meritorious. Moreover, there is nothing on record to show that there was any adverse material against the petitioner either as adverse remark or as penalty or pendency of a departmental enquiry. Similarly, no material has been placed before this Court to show respondent No.3 had to her credit, any exemplary performance in service to gain more merit, as compared to the petitioner. If I may say so, the return of the State is blissfully vague.

12. Though, no representation is made on behalf of the respondent No.3, return of respondent No.3 has been filed. In that return also, nothing has been disclosed by respondent No.3 to demonstrate and justify that she was entitled to promotion in supersession of the petitioner on account of more meritorious service record.

13. This Court finds that before the Tribunal minutes of DPC were placed in a

sealed cover but then Tribunal had observed that the relevant ACR of the officers whose cases were considered for promotion, were not placed before the Tribunal. Subsequent order-sheet shows that despite repeated direction, ACRs were never produced before the Tribunal.

14. The Minutes of DPC as, has been discussed herein above, are not available.

15. The burden primarily was on the respondents to justify supersession of the petitioner. In the absence of ACR of the petitioner and respondent, which were not produced before the Tribunal or before this Court despite repeated direction, this Court is left with no option but to record a finding in favour of the deceased petitioner that her supersession had no justification under the law.

16. It is found that respondent No.3 was promoted on 04.09.1991.

17. No fruitful purpose would be served if at this stage, I remit the case to the authority for reconsideration because respondent No.3 retired long back and the original petitioner also died.

18. In the considered opinion of this Court, interest of justice would be met if a direction is issued directing that the deceased petitioner shall be given notional promotion as professor with effect from 04.09.91. That would also carry along with it notional fixation of pay. In the circumstances, I am not inclined to direct payment of any actual benefit on 04.09.91 till 31.07.1996 but the notional fixation would then be taken into consideration to arrive at last pay certificate on the date of retirement resulting in revision of pension, gratuity, leave encashment and all other benefits dependening upon the last pay drawn at the time of recruitment.

19. Arrears of pension shall be payable to the petitioner by the successor State of Madhya Pradesh and Chhattisgarh in accordance with the distribution of assets and liabilities worked out under the provision of the Madhya Pradesh Reorganization Act, 2000 and agreement between the two states in that regard. The necessary exercise should be completed within an outer limit of four months from the date of receipt of copy of this order.

20. The petition is accordingly partly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge